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DATE ISSUED: August 29, 2000

Case No: 1999-CLA-18

In the Matter of

T. MICHAEL KERR, ADMINISTRATOR
WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,[1]

Plaintiff,

v.

LYNNVILLE TRANSPORT, INC.,

Respondent.

APPEARANCES:

Mary D. Wright, Esq.
Monica Thompson, Esq.
United States Department of Labor
Office of the Solicitor
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For the complainant

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For the respondent

BEFORE: DONALD W. MOSSER
Administrative Law Judge

DECISION AND ORDER

[1]The caption is corrected to conform with 29 C.F.R. § 580.10 and the appointment of a new Administrator.

This action arises from an Order of Reference filed by the Regional Solicitor, U.S. Department of Labor on January 13, 1999, and the April 7, 1998 Notice of Assessment of Civil Money Penalty of the District Director, Employment Standards Administration, Wage and Hour Division, U.S. Department of Labor, Des Moines, Iowa. Plaintiff alleges Lynnville Transport, Inc. [Lynnville] violated the child labor provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 901, et seq. [the Act] and the regulations promulgated thereunder, 29 C.F.R. Part 570.[2] The Secretary of Labor also alleges through her district director that Lynnville violated the Act principally by failing to maintain birth date records, employing minors for excessive hours and at improper times of the day, and engaging in underage employment in a hazardous occupation. Plaintiff further contends the respondent's violations justify the imposition of civil money penalties against Lynnville pursuant to Section 16(e) of the Act.

The respondent requested a formal hearing concerning the matters raised in the Order of Reference and the Notice of Assessment of Civil Money Penalties. A hearing was held on September 10, 1999, at Des Moines, Iowa, during which the parties were afforded the opportunity to present evidence. Both parties filed post-hearing briefs.

The findings of fact and conclusions of law set forth in this decision are based on a thorough review of the evidentiary record in light of the arguments advanced by the parties. Exhibits of the administrative law judge and plaintiff are marked as ALJX and CX, respectively. The transcript of the hearing is cited as Tr. and by page number.

ISSUES

The issues remaining to be decided in this proceeding are: (1) whether the respondent violated the Act by engaging in oppressive child labor; and, if so, (2) the amount of civil money penalties to be assessed.

FINDINGS OF FACT

Lynnville Transport, Inc. is owned and operated by Martin Vander Molen and his wife, Betty. Lynnville's business address is Sully, Iowa, and it engages in commerce or in the production of goods for commerce. Specifically, Lynnville engages in the

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[2]Regulation section numbers cited in this decision exclusively pertain to this title of the Code of Federal Regulations.

interstate transport of livestock, which principally is owned by other individuals or companies. Income generated from Lynnville's hauling division was approximately $1,800,000 in 1996 and in excess of $2,000,000 in both 1997 and 1998. Lynnville had 60 full-time and part-time employees during 1996 and 68 employees in the following year. (CX 2, 3; Tr. 197, 214).

During the time period pertinent to this case, January, 1996 through January, 1998, Lynnville employed nine minors under 18 years of age for the purpose of cleaning the trucks and trailers used in hauling livestock. Seven of these minors were under the age of 16 years and three of these seven were 13 years of age at the times pertinent to this case. Regarding the minors' work hours: (1) one minor worked in excess of 40 hours in a workweek six different times, including twice when he was only 13 years of age, while school was in session; (2) another minor, age 13, worked before 7:00 a.m. or after 7:00 p.m. on ten different occasions and worked in excess of 8 hours while school was not in session, then in excess of 18 hours per week at least two times during the school year; (3) a third minor, age 15, worked in excess of 40 hours in a workweek at least seven times while school was not in session, then in excess of 18 hours three times during the school year; (4) another minor, who was 13 years of age, worked past 7:00 p.m. on at least 8 days while school was in session; (5) a minor age 14 years worked in excess of 3 hours per day and past 7:00 p.m. on at least two occasions while school was in session; and, (6) another 13 year old employee worked in excess of 8 hours a day on two occasions while school was not in session, then past 7:00 p.m. on 20 occasions and in excess of 18 hours per week two times while school was in session. (CX 1, 2).

Lynnville owns a New Holland LX 865 Skid Loader (skid loader), which its employees use principally to move manure and other materials around in cleaning the trucks, trailers and surrounding loading area. The skid loader is also incidentally used to move or pull other equipment, such as a hay wagon, around the loading facilities. The skid loader, for purposes of this case, can best be described as a power driven industrial type high-lift truck, which is equipped with a power-operated lifting device with an attached shovel. It weighs over 7,000 pounds and has a top speed of 7-8 miles per hour. Its maximum lift capacity is 2,610 pounds and its boom or lifting device extends to a height of 12½ feet. The boom of the skid loader can be raised to its highest capacity in 3.6 seconds while loaded and it takes only 1.5 seconds to lower the boom from its highest level to its lowest level when it is unloaded. The shovel and the boom of the skid loader are operated by two levers on the floor of the skid loader. The skid loader is inoperable and will not start unless the operator fastens his seatbelt. The operator of the skid

loader is enclosed in a cagelike area and protected by a roll bar. (CX 6-9, 11; Tr. 48, 57, 64, 67).

Five minors were employed by Lynnville in performing cleaning duties. Two of these employees were under the age of 14 years when they began operating the skid loader. The minors were trained in the operation of the skid loader by their adult supervisors. The minors did not lift the shovel to high levels in operating the skid loader. (Tr. 120). Instead, they used the shovel to pull or push manure and other materials around in cleaning. The shovel was only tilted at low levels to transport these materials. (Tr. 25, 31, 33, 158-159, 162, 166-167, 169, 172-173, 175, 198-199, 207).

The minors who operated Lynnville's skid loader were never shown an operating manual or any written information about the operation and use of the machine. (Tr. 28, 162, 172). The operating manual contains several warnings regarding various hazards of the skid loader. At least 12 of these warnings are included on labels and placed at various locations on the skid loader. (Tr. 50-51; CX 10, 12). Of particular interest to this case, the manual of the skid loader provides the following safety warning: "Do not allow children to operate the loader or ride on the loader at any time." (CX 12, p. 3).

An investigator of the Wage and Hour Division of the U.S. Department of Labor conducted an examination of Lynnville's business operation in January of 1998. (Tr. 72, 77). As a part of this examination, the investigator examined the company's payroll records, inspected the business premises and interviewed some of the employees. (Tr. 72-76). He concluded from this investigation that Lynnville committed minimum wage and overtime violations of the Act, which back wages were paid by the company and are not the subject of this proceeding. (CX 13-19, 27). However, he also determined that the respondent committed the following child labor violations from January of 1996 through January of 1998: (1) failed to record dates of births of some of the minors; (2) employed minors under the age of 14 years and allowed them to work excessive hours and beyond prescribed time limits; (3) allowed minors under the age of 16 to work in transportation; (4) permitted minors under the age of 16 years to work excessive hours and beyond prescribed time limits; and, (5) allowed minors under the age of 18 years to operate a skid loader which has been determined by the Secretary of Labor to be a hazardous occupation. (CX 26). The investigator's recommendations and report were submitted to his supervisor, a district director of the Wage and Hour Division, for the purpose of determining the civil money penalties to be assessed against

Lynnville for the determined child labor violations. (ALJX 1; CX 26; Tr. 108, 127).

The district director used a Child Labor Civil Money Penalty Report (Form WH-266) to compute the recommended penalties against the respondent. (CX 26; Tr. 127). This Department of Labor form report, which apparently was created by national office personnel of that agency to assist field personnel, provides step-by-step procedures for computing the pertinent penalties. (CX 26; Tr. 127). Following is a list of the contested violations and respective penalties as determined by the district director in the letter of assessment.[3]

Violation	Minimum Civil Money Penalties		Multiplied By Number of Violations	Multiplied by Factor (1.5/2.0)		Total Civil Money Penalties
Regulation 3 - Hours/Time Standard Violations	$ 450.00	X	3		=	$ 1,350.00
Regulation 3 - Occupations (Transportation)	650.00	X	4		=	2,600.00
Legal Age of Employment (14 years)	700.00	X	3		=	2,100.00
Regulation 3 - Hours/Time Standard (Under 14 years)	600.00	X	3		=	1,800.00
Regulation 3 - Occupation Standard (Transportation - under 14 years)	700.00	X	3		=	2,100.00
Hazardous Order (Operation of Skid-loader) Ages 16 or 17	1,200.00	X	2		=	2,400.00
Under 16 years of age	1,500.00	X	3		=	4,500.00
Child Labor Record-keeping/Birth dates of Minors	275.00	X	1		=	275.00
TOTAL						$17,125.00

[3]The district director computed a total of $21,125.00 of civil money penalties in the notice of assessment, but the plaintiff conceded $4,000 of these penalties at the hearing. (Tr. 13, 14, 129-137; CX 26).

The initial part of the child labor civil money penalty report utilized by the district director provides that penalties are to be recommended if any one of the following factors are present: (1) death or serious injury; (2) child labor compliance was not assured; (3) child labor violations were recurring; (4) employer knowledge of child labor was documented; (5) any hazardous work violation or employment under legal age occurred; and, (6) more than one minor involved. (CX 26). For purposes of this case, the district director determined that factors 5 and 6 were applicable. (CX 26; Tr. 127).

The second part of the civil money penalty report lists various violations for which civil money penalties can be assessed with a chart setting forth the minimum amounts to be considered. The pertinent part of this chart is set forth above. The violations and penalties listed above for Lynnville are taken from the pertinent part of this chart. The chart and associated instructions also provide that the minimum penalties for each violation should be multiplied by a factor of 1.5 if employer knowledge is documented and by 2.0 if any of the following factors are present: (1) child labor injunction; (2) falsification/concealment of child labor; (3) recurring child labor violations; or, (4) failure to assure child labor compliance. Obviously, the district director determined that the 1.5 and 2.0 factors were not applicable to this case. I should also note that the chart set forth in this section of the civil money penalty report does instruct that there is a maximum civil money penalty of $10,000 per minor. (CX 26).

The third part of the civil money report contains instructions for reducing the civil money penalties by a certain percentage if the employer has fewer than 100 employees and if child labor record keeping or Regulation 3 hours violations occurred. (CX 26). For purposes of this case, however, the district director determined that these factors were not applicable because of the hazardous order violations.

The district director issued the Notice of Assessment of Civil Money Penalties for child labor violations to Lynnville on April 7, 1998. The respondent filed its appeal on April 9, 1998. Plaintiff filed the Order of Reference on January 13, 1999. (ALJX 1).

CONCLUSIONS OF LAW

The purpose of the child labor provisions of the Fair Labor Standards Act is protection of "the safety, health, well-being and opportunities for schooling of youthful workers." 29 C.F.R.

§ 570.101. Section 12(c) prohibits any employer from employing oppressive child labor in interstate commerce. 29 U.S.C. § 212(c); 29 C.F.R. § 570.102. Section 3(1) of the Act defines "oppressive child labor" to include the employment of a minor under 14 years of age, employment of minors of ages 14 and 15 in an occupation involving transportation where work is performed in precluded time periods, and the employment of minors ages 14 through 18 in any occupation in which the Secretary of Labor has found to be particularly hazardous or detrimental to their health and well-being. See 29 C.F.R. §§ 570.117-570.120. It is particularly important to stress in cases of this nature that the Fair Labor Standards Act is to be liberally construed because it is remedial in nature. Lenroot v. Western Union Telephone Co., 52 F.Supp. 142 (S.D.N.Y. 1943), aff'd 141 F.2d 400 (2nd Cir. 1944), rev'd on other grounds, 323 U.S. 490 (1945). Lynnville conceded that its business is covered by this statute. (CX 2, p. 1; Tr. 13).

Child Labor Violations

There is no question that Lynnville committed child labor violations in the employment of the minors involved in this case. Indeed, the company concedes that it did not record the date of birth of one of its minor employees. This is a violation of Section 516.2(a)(3) of the regulations promulgated with respect to the Fair Labor Standards Act. 29 C.F.R. § 516.2(a)(3).

There also is no dispute that the respondent committed other child labor violations. It admits that it employed three 13 year old minors, which is a violation of Section 3(1) of the Act. See 29 C.F.R. § 570.117(a). Moreover, Lynnville concedes that seven of its nine minor employees worked in an occupation involving interstate transportation in violation of Section 570.33. The evidence also shows that seven of Lynnville minor employees under the age of 16 years worked an excessive amount of hours or during time periods which are precluded by the Act. Section 570.35 pertinently provides:

> (a) [E]mployment in any of the occupations to which this subpart is applicable shall be confined to the following periods:
>
> 1. Outside school hours;
>
> 2. Not more than 40 hours in any 1 week when school is not in session;

> 3. Not more than 18 hours in any 1 week when school is in session;
>
> 4. Not more than 8 hours in any 1 day when school is not in session;
>
> 5. Not more than 3 hours in any 1 day when school is in session;
>
> 6. Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

With regard to this section of the regulations, the evidence clearly shows that one minor 13 years of age worked past 7 p.m. numerous days while school was in session and that other minors worked in excess of 3 hours a day on school days, over 18 hours during a school week and more than 8 hours in a day during a non-school week. Lynnville concedes that its records support these allegations and that the times worked by the minors are contrary to the provisions of Section 570.35.

The principal controversy in this case involves the minors' operation of the skid loader. The plaintiff maintains that this equipment falls within the Secretary of Labor's Hazardous Order 7 included in Section 570.58(a)(1) and (b)(5). The pertinent part of Section 570.58 provides that occupations involving the operation of an elevator, crane, derrick, hoist or high-lift truck are particularly hazardous for minors between the ages of 16 and 18 years of age. 29 C.F.R. § 570.58(a)(1). Subsection (b)(5) of that section of the regulation goes on to define high-lift truck as "a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device . . . in the form of a fork platform . . . [or] a ram, scoop, shovel, crane, or other attachments for handling specific loads." That section goes on to indicate that a high-lift truck is not intended to include "low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of material." 29 C.F.R. § 570.58(b)(5). It is the Secretary's position that five minors operated the skid loader involved in this case and that such operation violates the hazardous order provided in Section 570.58(a)(1). Lynnville concedes the minors operated the skid loader, but argues they did not use this equipment in a manner which is prohibited by the regulations.

The evidence regarding the minors' use of the skid loader is quite simple. They used the skid loader in such a manner as was

necessary to clean the respondent's trailers and surrounding loading sites. They pushed or pulled manure or other materials around by lowering the shovel of the skid loader to its lowest level so that the shovel was on the floor or they manipulated the shovel by levers so that the shovel could transport the materials at a low level to a dumping site. The parties agree that the minors were not required to raise the shovel of the skid loader to a high level at any time during the performance of their work-related duties.

I find it is the mere use of the skid loader by minors that is precluded by Section 570.58(a)(1). How the minors used the equipment, which is clearly covered by Hazardous Order 7, is not important to the resolution of this case. I recognize that Section 570.58(b)(5) indicates that the use of a low-lift truck for the transportation of material is not intended to be covered by the hazardous order, but Lynnville's employees were not using a low-lift truck. They clearly were using a high-lift truck, which is contrary to Hazardous Order 7, and the operation of such a truck by minors is precluded by the hazardous order even if the minors' use of the equipment was consistent with that normally performed by low-lift trucks.

Although the minors testified that they did not lift the shovel of the skid loader to high levels in performing their duties, the fact that they had the opportunity to do so, either intentionally or unintentionally, by moving the levers, placed the minors and other minors in the area in a potentially hazardous position. If respondent's argument is accepted in this case, then it could be applied to the use of any equipment precluded by the hazardous orders provided in the regulations so long as the minors avoid all potential hazardous uses of such equipment. Such a liberal interpretation of the pertinent hazardous orders would allow the employers and/or the minors to make the decision as to how the hazardous equipment should be operated to preclude a hazardous condition.

Moreover, the investigative report prepared in connection with Hazardous Order 7 provides in pertinent part:

> One of the most important hazards revolves around the driving of the lift truck. Improper or careless driving results in the truck striking other workers or other vehicles, many such accidents occurring when the truck is backing up. . . . Injuries also occur when the load is accidently lowered upon the feet of a helper or when the load falls while being lowered and strikes the helper or a fellow worker. A few accidents occur because of the failure of a lift but by far the

> majority are due to failure to follow safe operating rules and to insufficient skill or error of judgment on the part of the operator.

U.S. Department of Labor, Division of Labor Standards, The Operation of Hoisting Apparatus – Occupational Hazards to Young Workers, Report No. 7 (1946).

That investigative report goes on to pertinently provide the following regarding the use of high-lift trucks:

> The types of accidents causing the largest percentage of injuries are those usually associated with a lack of judgment or coordination on the part of the operator ("caught between or struck by objects while loading and unloading" and "hit by moving fork lift"). This . . . also shows that the operator carries a great deal of responsibility for the safety of those working with him or in the vicinity. . . . To protect himself and others about him, the operator of a high-lift truck most possess the characteristics of judgment, caution, and responsibility — characteristics seldom found in young persons.

Id. at p. 18. As correctly noted by the plaintiff in its brief, the report pertaining to Hazardous Order No. 7 specifically provides that it pertains to work involving "not only the raising and lowering of the load, but also the horizontal movement and the placing of the load at a designated spot." Id. at p. 4.

Although this last reference was to the findings of a study conducted by the Air Technical Service Command of the Army Air Force, the rationale is clearly applicable to a case of this nature. It is quite clear from the investigative report that Hazardous Order 7 was intended to preclude the operation of high-lift trucks by minors under all circumstances. Therefore, I find respondent's argument to be illogical and is not accepted for purposes of this case. I find that Lynnville violated the child labor provisions of the Act by allowing the minors involved in this case to operate the skid loader. U.S. Dept. of Labor v. Sewell-Allen, Inc. et al, 92-CLA-161, 162 (ALJ May 24, 1995).

Civil Money Penalties

The remaining question is whether the amounts assessed by the complainant are appropriate considering the nature of the child labor violations. Section 16(e) of the Act provides for "a civil money penalty not to exceed $10,000 for each employee who

was the subject of" a child labor violation of Section 12 of that statute. The pertinent regulations under Section 12 of the Act initially repeat the specific considerations set forth in the statute but the regulation goes on to also require consideration of additional factors. 29 C.F.R. § 579.5(a)-(d).

Plaintiff's investigator of Lynnville's compliance with the child labor provisions of the Act was solely responsible for determining whether there were violations rather than the amount of penalties to be assessed. His supervisor, the district director, then determined the amount of penalties to be assessed against the respondent. In doing so, the district director used a Child Labor Civil Money Penalty Report (Form WH-266) to compute the recommended penalties. One of Lynnville's arguments is that the district director did not properly take into account the mitigating factors set forth in Section 579.5 in determining the amount of the assessments. It argues through counsel that in relying on the forms to calculate the proposed penalties, the district director clearly failed to consider all of the relevant factors. This argument has been considered by the Administrative Review Board, to which this decision is appealable, and it has rejected this argument. Administrator v. Thirsty’s, Inc., 94-CLA-65 (ARB May 14, 1997).

Before considering the factors set forth in Section 579.5 of the regulations, I should note that the district director's recommendation of penalties is entitled to respect. It is only my responsibility to determine whether the penalties proposed by the district director are appropriate in light of the evidence presented to me and the factors set forth in Section 579.5. Subsection (b) of that section of the regulations requires the consideration of certain financial or business factors regarding the company charged with the child labor violation. These factors include: (1) the number of persons employed; (2) the volume of sales or business; (3) the amount of capital investment and financial resources; and, (4) other information relevant to the size of the business.

The district director gave little consideration to the financial factors set forth above in calculating the civil money penalties involved in this case. While the investigator did inquire as to the number of employees and the volume of sales of Lynnville, this information did not enter into the district director's calculation of the penalties. It is obvious, however, that the instructions set forth in the child labor civil money penalty report give no recognition to the financial factors set forth in Section 579.5(b). Also, it is obvious that the district director had no discretion because he was required to follow the

instructions set forth in the penalty report. I do note that the district director was instructed by the form to consider the number of Lynnville's employees in deciding whether to reduce the penalties, but only if the violations involved such things as record keeping, improper hours and other factors unrelated to the financial aspects of the dealer, not hazardous order violations such as those involved in this case.

It is my responsibility to consider the appropriateness of the civil money penalties in light of the factors set forth in Section 579.5(b), despite the district director's failure to consider all of these factors. I find that the limited amount of financial information submitted into evidence by the parties neither supports nor detracts from the appropriateness of the civil money penalties recommended by the complainant. I do note, however, that Lynnville had employed minors in the past and that it was of sufficient size to be knowledgeable of the child labor requirements. I also note that Lynnville conceded at the hearing that it is financially able to pay the assessed penalties and that it did not dispute the penalties based on its size or finances. (Tr. 14).

Section 579.5(c) provides additional factors to consider in regard to the appropriateness of the penalties in light of the gravity of the violations. These factors include consideration of: (1) any history of prior violations; (2) evidence of willfulness or failure to take reasonable precautions to avoid violations; (3) the number of minors illegally employed; (4) the age of the minors, as well as records regarding age; (5) the occupation of the minors; (6) exposure to hazards or any resulting injuries; (7) duration of illegal employment; and, (8) the hours of day during which the employment occurred and whether such employment was during or outside school hours.

Lynnville maintains that the violations involved in this case were not of severe gravity and that the violations were not willful. It notes that the minors essentially set their own hours of work, assuming work was available. Lynnville also points out the minors' parents, some of whom also were employees, agreed to the minors' work hours.

I believe the district director considered the severity of the violations and whether they were willful in recommending the penalties. For example, the recommended penalties are nowhere near the maximum amounts allowed by the statute. I also find the fact that the minors were able to set their own hours detracts from the employer's position since it shows that Lynnville was either not cognizant of the hours limitations or did not take seriously the prohibition regarding the limits on employing

minors while school was in session. Moreover, whether the parents condoned the amount of hours worked and/or the times worked by their children has no bearing on the reasonableness of the penalties in question. The controlling law and the regulations provide the limits for the employment of minors and such matters cannot be left to the discretion of employers and parents.

The form utilized by the district director also requires consideration of additional Section 579.5(c) factors in that varying amounts of penalties are recommended based on the ages of the employees, the hazards and nature of the occupation, and the working hours both during and outside school hours. Also, the history of prior violations and employer knowledge are considered in using the form since the instructions require increasing the initial recommended penalties by an appropriate multiple if such factors are documented. I also note that the district director did consider the ages of the minors involved in this case. The form utilized by him to calculate the penalties provides varying amounts based on the ages of the minors as well as penalties for record keeping violations regarding age. It is also true that the number of minors illegally employed was considered by the district director since the form he utilized to calculate the penalties provides for a multiple based on the number of violations or minors involved in the violations. Therefore, I believe the district director did consider many of the factors set forth in Section 579.5(c) in recommending the penalties involved in this case.

Subsection (d) of Section 579.5 provides that, where appropriate, consideration shall also be given to whether penalties are necessary to achieve the objectives of the Act. That section of the regulations further provides that consideration is to be given to whether: (1) the violations are "de minimis"; (2) there is no previous history of child labor violations; (3) the employer’s assurance of future compliance is credible; and, (4) exposure to obvious hazards was inadvertent rather than intentional. Such factors also relate to the degree of willfulness involved in the violations.

Lynnville does argue that the violations are de minimis in nature. In this regard, I note that de minimis is defined as "very small or trifling matters" for which "the law does not care for or take notice of." Black’s Law Dictionary, 388 6th Ed. (1990); Echaveste v. Horizon Publishers and Distributors, 90-CLA-29 @ 7 (Sec’y May 11, 1994), aff’d on recon. (July 21, 1994). However, I find the "de minimis" argument to be of little value where, as here, there were numerous violations and some of the

violations involved the use of hazardous equipment by minor employees, some of whom were only 13 years old. It may appear to Lynnville that some of the violations are trivial. However, I specifically find that the company's allowance of its minor employees to operate hazardous equipment to be serious, despite the fact that the minors involved in this case apparently used the equipment in a safe manner. The mere use of the equipment subjected them to potential harm which is to be avoided by compliance with the hazardous orders. As I have stated before in cases of this nature, it would take only one serious accident in the operation of the hazardous equipment for all concerned parties to understand the importance of enforcing the hazardous orders.

There is no question that the district director considered most of the factors set forth in Section 579.5(c) and (d). The question is whether the recommendations by the district director are appropriate in light of his failure to consider all of the factors set forth in that section of the regulations. In this regard, I reiterate that the statute allows for a penalty of as much as $10,000 for each minor involved in the violation. Thus, the district director technically could have recommended penalties far in excess of those proposed in the Order of Reference.

I find that the district director, through the use of the Child Labor Civil Money Penalty Report, did take into account many of the factors required by the regulations. Those he did not take into account, I conclude, do not affect my decision. I see no reason to depart from the penalties recommended by the district director, as these seem reasonable under the circumstances, and are sufficient to accomplish their purpose of punishing violators of the child labor laws and encouraging future compliance with those laws. Therefore, I sustain the civil money penalties as assessed by the district director in full.

I note in closing that there was some disagreement among the parties as to whether the investigator assured Lynnville's owners that there would be no penalties assessed if they guaranteed future compliance. The evidence in this regard is conflicting but it tends to support the plaintiff's position that the investigator was referring to penalties involved in a separate Wage and Hour case rather than those pertaining to the child labor violations. (Tr. 116-117, 188, 205-206, 208, 211, 228). Notwithstanding, this is of no materiality to my resolution of the case since I only have jurisdiction to determine whether the penalties assessed are reasonable given the gravity of the violations. I have concluded that the penalties are reasonable considering the facts of this case.

ORDER

IT IS HEREBY ORDERED, pursuant to 29 C.F.R. § 580.12, that the determination of the District Director, Employment Standards Administration, Wage and Hour Division, United States Department of Labor, issued to Lynnville Transport, Inc. on April 7, 1998, as modified by the concession of the plaintiff at the hearing, is approved. IT IS FURTHER ORDERED that Lynnville Transport, Inc. is to pay total civil money penalties totalling $17,125.00 for violations of the child labor provisions of Section 12 of the Fair Labor Standards Act.

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DONALD W. MOSSER
Administrative Law Judge